

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
The School Board of Miami-Dade County, Florida)	CSR-5921-M
)	
v.)	
)	
EchoStar Communications Corporation)	
)	
Request for Mandatory Carriage of)	
Television Station WLRN-TV, Miami, FL)	
)	
Petition for Issuance of Show Cause)	

MEMORANDUM ORDER AND OPINION

Adopted: October 31, 2002

Released: November 1, 2002

By the Deputy Chief, Media Bureau:

I. INTRODUCTION AND BACKGROUND

1. The School Board of Miami-Dade County, Florida, licensee of noncommercial television station WLRN-TV, Channel 17, Miami, Florida ("WLRN"), filed a must carry complaint¹ with the Commission to require EchoStar Communications Corporation ("EchoStar") to carry the station's signal on EchoStar's satellite system in a non-discriminatory fashion, pursuant to Section 338 of the Communications Act of 1934, as amended (the "Act"), and Section 76.66 of the Commission's rules.² WLRN also petitions for issuance of an order requiring EchoStar to show cause why it has failed to comply with the Commission's *Declaratory Ruling and Order* regarding EchoStar's two-dish plan.³ Petitioner states that EchoStar is providing "local-into-local" satellite service pursuant to the statutory copyright license in the Miami-Fort Lauderdale, Florida designated market area ("DMA"), where the station operates, and that the station elected must carry status for the 2002-06 election cycle.⁴ Petitioner alleges that EchoStar has failed to meet its must carry obligations under the Commission's satellite broadcast signal carriage rules by placing WLRN on facilities other than EchoStar's main continental United States ("CONUS") satellites. EchoStar carries most local stations, including local network

¹ Must carry complaints are treated as Petitions for Special Relief under Section 76.7 of our rules. See *1998 Biennial Regulatory Review: Part 76 – Cable Television Service Pleading and Complaint Rules*, 14 FCC Rcd 418 (1999).

² 47 C.F.R. § 76.66.

³ See *National Association of Broadcasters and Association of Local Television Stations, Request for Modification or Clarification of Broadcast Carriage Rules for Satellite Carriers*, 17 FCC Rcd 6065 (2002) ("Declaratory Ruling"), petitions for reconsideration and applications for review pending.

⁴ See 17 U.S.C. § 122(a); 47 U.S.C. § 339. A satellite carrier provides "local-into-local" satellite service when it retransmits a local television signal back into the local market of that television station for reception by subscribers. 47 C.F.R. § 76.66(a)(6).

affiliates, on its CONUS satellites, allowing these signals to be received through subscribers' existing receive dishes. Even though it is in the same market as these affiliates, EchoStar carries WLRN on one of its "wing" satellites. As a result, EchoStar subscribers who wish to receive WLRN must obtain a second receive dish. WLRN asks that the Commission issue an order requiring EchoStar to show cause why it has not delivered the signal of WLRN to subscribers in the Miami-Fort Lauderdale market on its primary satellite. EchoStar filed an opposition to the complaint and WLRN filed a reply.

II. DISCUSSION

2. In our *Declaratory Ruling*, we found that EchoStar's two-dish plan as implemented violated the carrier's broadcast signal carriage requirements under the Satellite Home Viewer Improvement Act of 1999 ("SHVIA"). Specifically, we held that EchoStar's two-dish plan violated the prohibitions contained in Section 338(d) of SHVIA and Section 76.66(i) of the Commission's rules, which prohibit discrimination in price, channel positioning, and on-screen program guide and menu treatment. The *Declaratory Ruling* concluded that EchoStar was required to remedy the unlawful discrimination⁵ and outlined potential avenues for doing so.⁶ EchoStar was also required to submit a series of Compliance Reports at 30, 90 and 150 day intervals following release of the *Declaratory Ruling* describing the specific remedial actions taken.⁷ EchoStar timely filed its compliance reports, which are under review. It is not clear from the record in the instant matter, however, whether EchoStar has complied with the *Declaratory Ruling* and followed the procedures outlined in its Compliance Reports with regard to WLRN.

3. WLRN contends that the station should not be placed on a secondary satellite, that the station is not listed on EchoStar's on-screen program guide, and that subscribers and retailers are not given accurate information regarding the station.⁸ EchoStar argues that its carriage of the station on a secondary satellite is not, *per se*, contrary to the *Declaratory Ruling*, and that it anticipates completion of upgraded Electronic Program Guides by July 31, 2002 or soon thereafter.⁹ EchoStar also contends that it has made substantial efforts to train its customer service representatives, and revised its marketing materials provided to retail outlets.¹⁰

4. WLRN has alleged that as of August 2002, EchoStar's customer service representatives were not providing subscribers with information required by the *Declaratory Ruling* regarding availability of the station and pricing of the second dish.¹¹ EchoStar has provided no supplemental information contesting these allegations. WLRN also contends that as of the date of its complaint, the station did not

⁵ *Declaratory Ruling*, *supra*, at 6081-84 (describing requirement to remedy all forms of discrimination found: discrimination in terms of price; discriminatory access to stations on the on-screen program guide and menu; and failure to offer stations on contiguous channels).

⁶ *See, e.g., id.* at 6082 (must make immediate and direct communication with any affected subscribers who need additional equipment, and automatically provide free second antenna to new subscribers); 6082-83 (on-screen program guide and menu must present a complete list of all local channels in nondiscriminatory manner and subscriber's tuner must provide access to every local channel). *See also id.* at 6082 (consolidating all local stations in a market from the same satellite location would remedy need for additional equipment and, thereby, remedy unlawful discriminatory conduct).

⁷ EchoStar filed its 30 Day Compliance Report on May 6, 2002, its 90 Day Compliance Report on July 3, 2002, and its 150 Day Compliance Report on September 2, 2002 in CSR-5856-Z.

⁸ Petition at 5; Reply at 5.

⁹ Opposition at 8.

¹⁰ Reply at 5-7. *See also*, 30,90, and 150 Day Compliance Reports, *supra*.

¹¹ Reply at 5, Declaration of Dane Taylor, August 2, 2002, Declaration of Steven Weisberg, August 2, 2002.

appear on EchoStar's Electronic Program Guide and that retailers were not provided with information regarding how to access the station on an EchoStar system.¹² Although EchoStar contends that it anticipated upgrading its Electronic Program Guide July 31, 2002 or shortly thereafter, EchoStar has provided no supplemental information regarding completion of the Electronic Program Guide upgrades in the Miami-Fort Lauderdale market. EchoStar's 150 Day Compliance Report, dated September 3, 2002, states that although it has significantly completed its upgrade to the Electronic Program Guide, "a de minimus number of individual [set top boxes] may not have been properly upgraded due to technical difficulties...." We cannot determine whether set top boxes in the Miami-Fort Lauderdale market have been upgraded so that subscribers can receive information about the availability of WLRN. The upgrade would presumably ensure that WLRN is included in the on-screen guide or other menus in a non-discriminatory manner.¹³

5. Insofar as WLRN's complaint suggests that the remedial provisions of the *Declaratory Ruling* should have mandated a one-dish carriage system for local television stations, the complaint raises no new issues other than those already considered and addressed in that ruling. To the extent that WLRN's complaint is in reality a petition for reconsideration of the *Declaratory Ruling*, it would be late-filed.

6. Pursuant to the *Declaratory Ruling*, EchoStar was required to remedy certain of the types of unlawful discrimination alleged by WLRN, including Electronic Program Guide and customer service representative training deficiencies.¹⁴ The record in this proceeding does not demonstrate that EchoStar has cured the specific violations alleged by WLRN. Accordingly, we require EchoStar to submit a Compliance Report and Plan describing the specific actions it has taken concerning WLRN within 30 days of the release of this Order.

7. This action should not be seen as a review or approval of EchoStar's overall compliance efforts with respect to the *Declaratory Ruling*, or as an indication of the outcome of the pending petitions for reconsideration and applications for review of that item. To the extent that EchoStar's compliance record is found to be insufficient, any further remedial action mandated by the Commission would apply to EchoStar's local-into-local operations nationwide, including carriage of the station in the Miami-Fort Lauderdale, Florida DMA. The Commission's resolution of the pending petitions for reconsideration and applications for review of the *Declaratory Ruling* shall have similar nationwide effect.

¹² Petition, Declaration of Barbara Salvin, June 13, 2002. EchoStar's 30 Day Compliance Report, dated May 6, 2002, states that it is providing a specially prepared brochure "which retailers can use to fully explain the second dish solution for new subscribers."

¹³ See *Declaratory Ruling*, *supra*, at 6080.

¹⁴ See *id.* at 6081-83 (describing requirement to remedy discrimination in terms of price and discriminatory access to stations on the on-screen program guide).

III. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED**, pursuant to Section 338 of the Communications Act, as amended, 47 U.S.C. § 338, and Section 76.66 of the Commission's rules, 47 C.F.R. §§ 76.66, that the must carry complaint and order to show cause filed by The School Board of Miami-Dade County, Florida **IS GRANTED** to the extent indicated herein.

9. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules, 47 C.F.R. § 0.283.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
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